

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT – CHANCERY DIVISION

Bruce Askew,
Plaintiff

v.

No. 09 CH 46145

Police Board of the City of Chicago,
et al.,
Defendants

Memorandum Opinion

This cause is before the Court on the Plaintiff, Bruce Askew's petition for Administrative Review of the Defendant Police Board of the City of Chicago's decision to suspend Mr. Askew from his position as police officer with the Chicago Department of Police for a period of one year.

I. Introduction

An administrative agency's decision must be against the manifest weight of the evidence to be overturned in Illinois. The Police Board of the City of Chicago suspended Police Officer Bruce Askew from the Department for one year for violating Rules 1, 2, and 9 of the City's Rules of Conduct. Mr. Askew seeks review of that decision under Administrative Review Law.

II. Facts

Bruce Askew is an officer of the Chicago Police Department. On April 15, 2007, Officer Askew was scheduled to work the 7:00 a.m. to 3:00 p.m. shift in the 7th District. At approximately 6:30 a.m. on that morning, Askew drove past a currency exchange located at 6858 S. Ashland Avenue on his way to work. Inside the currency exchange Officer Askew noticed a man, Jimmy Brown, placing newspapers on a ledge. Officer Askew recognized this man from prior contacts. On at least three prior occasions, Officer Askew issued Mr. Brown a general offense report or ordinance violation for trespassing inside the exchange or for illegally selling cigarettes. Although Mr. Brown testified that he had permission from the owner of the currency exchange to sell newspapers inside the exchange, a previous manager gave conflicting testimony on the same issue. Gary Vandenheuval, a manager of the currency exchange from 2000-2006 and 2009, testified that the owner of the exchange did not want Mr. Brown in the store. Mr. Vandenheuval stated that he relayed such information to Mr. Brown on approximately 100 occasions. Furthermore, Mr. Brown received a ticket for criminal trespassing in the exchange in February, 2007.

Upon seeing Mr. Brown in the currency exchange on the morning of April 15, 2007, Officer Askew entered the exchange, pushed Mr. Brown on the chest and shoulder area, and said, "I got you," and "get the hell out." He then threw some of the papers on

the floor, and exited the exchange. Officer Askew was not on duty or in full uniform at the time of the incident.

Shortly after the incident, Mr. Brown informed the Chicago Police Department of Officer Askew's actions. The Department sent a supervising officer, Sergeant Richard Lombard of the Area 4 Detective Division, to investigate the complaint. At approximately 6:45 a.m. on April 15th, Sergeant Lombard spoke with Mr. Brown in person regarding the incident that occurred earlier that morning. Sergeant Lombard also asked Mr. Brown if he needed medical attention. Although Mr. Brown declined medical treatment, he visited Holy Cross Hospital four days later claiming aggravation of a previous injury as a result of the incident with Officer Askew.

The following morning, while Officer Askew was on patrol, his district received a 911 call from a citizen complaining of an individual selling cigarettes and possibly drugs at the currency exchange. Officer Askew responded to the call and went to the location. Upon arriving, he saw Mr. Brown speaking with another individual inside the exchange. Officer Askew then observed Mr. Brown take money from the individual, walk out to the newspaper stand located outside the exchange, and give the money to a Mr. Henry Saffold, an individual who works with Mr. Brown at the stand. Mr. Saffold handed Mr. Brown several packs of cigarettes, which Mr. Brown then gave to the unknown individual. Officer Askew arrested Mr. Brown and Mr. Saffold for selling cigarettes without a license, charges to which Mr. Brown plead guilty, and Mr. Saffold was found guilty.

An investigation was undertaken by the Office of Professional Standards of the Chicago Police Department (now the Independent Police Review Authority) into the April 15th incident involving Officer Askew. Jessica Sanchez, an investigator for the Review Authority, was assigned to investigate the incident. Investigator Sanchez interviewed Askew, spoke to the victim-complainant, and watched a surveillance video of the incident captured by the surveillance camera inside the currency exchange. Investigator Sanchez turned in her findings to the Review Authority, and the Superintendent of Police filed charges with the Police Hearing Board against Officer Askew for violating Rules 1, 2, 9, and 14 of the Rules and Regulations of the Chicago Police Department Rules of Conduct. The Police Board held a hearing on the charges and determined that Officer Askew violated Rules 1, 2, and 9. Consequently, the Board suspended Officer Askew from duty for a period of one year. Officer Askew seeks administrative review of that order under the Administrative Review Law.

III. Discussion

In order for a court of review to find that an agency's decision is against the manifest weight of the evidence, the court must be able to conclude that "all reasonable and unbiased persons, acting within the limits prescribed by the law and drawing all inferences in support of the finding, would agree that the finding is erroneous, and that the opposite conclusion is clearly evident." *O'Boyle v. Personnel Board*, 119 Ill.App.3d 648 (1st Dist.1983). "Simply put, if there is evidence of record that supports the agency's

determination, it must be affirmed.” Bono v. Chicago Transit Authority, 379 Ill.App.3d 134, 143 (1st Dist. 2008). In the case at bar, the Police Hearing Board’s findings that Officer Askew violated Rules 1, 2, and 9 are supported by evidence in the record, and are therefore not clearly against the manifest weight of the evidence.

A. THE FINDINGS OF THE HEARING BOARD ARE NOT CONTRARY TO THE MANIFEST WEIGHT OF THE EVIDENCE

The Police Hearing Board found Mr. Askew guilty of violating Rule Numbers 1, 2, and 9 of the Rules and Regulations of the Chicago Police Department Rules of Conduct. The Rules state that prohibited acts include:

Rule 1: Violation of any law or ordinance.

Rule 2: Any action or conduct which impedes the Department’s efforts to achieve its policy and goals or brings discredit upon the Department.

Rule 9: Engaging in any unjustified verbal or physical altercation with any person, while on or off duty.

Chi. Police R. Conduct.

The applicable law for Rule 1 is Chapter 720 of the Illinois Compiled Statutes, Section 5/12-3(a)(2). The Section states:

(a) A person commits battery if he intentionally or knowingly without legal justification and by any means, (1) causes bodily harm to an individual or (2) makes physical contact of an insulting or provoking nature with an individual.

720 ILCS 5/12-3(a)(2)(Lexis 2006).

The Hearing Board found that by entering the currency exchange while off-duty on April 15, 2007, and pushing Jimmy Brown on the neck and chest area, Officer Askew committed a battery.

Mr. Askew asserts that his actions were justified, and that he therefore cannot be found guilty of violating Section 5/12 nor Rules 1 and 9 of the City’s Rules of Conduct. The purpose of this court, however, is not to resolve questions of fact. Whether Officer Askew acted justifiably is a question of fact, and is to be determined by the Hearing Board. In an action under the Administrative Review Law, factual determinations by an administrative agency are held to be prima facie true and correct and will stand unless contrary to the manifest weight of the evidence. 735 ILCS 5/3-110 (Lexis 2006); *see also*, Kimball Dawson, LLC v. City of Chicago Dep’t of Zoning, 369 Ill.App.3d 780, 786 (1st

Dist. 2006). As stated in Abrahamson v. Illinois Dept. of Professional Regulation, 153 Ill.2d 76 (1992), "On administrative review, it is not a court's function to reweigh the evidence or make an independent determination of the facts. Rather, the court's function is to ascertain whether the findings and decision of the agency are against the manifest weight of the evidence. The reviewing court may not substitute its judgment for that of the administrative agency. If the record contains evidence to support the agency's decision, it should be affirmed." Abrahamson, 153 Ill.2d at 87. The finding of the Police Board that Officer Askew was not justified in his actions is supported by evidence, and this court will not overturn that finding.

The word "justification" is defined as a "lawful or sufficient reason for one's acts or omissions." Blacks Law Dictionary 401 (3d ed. 1996). Lawful justifications include self-defense and the use of force to make an arrest. Bryan A. Gardner, A Dictionary of Modern Legal Usage 337 (Oxford Univ. Press ed. 1995)(1987). Courts have stated that off-duty officers are permitted to make arrests. As stated in People v. Bouse, "A police officer is vested with the duty to effectuate arrests by virtue of his office. This duty is not affected by whether the officer is in or out of uniform." People v. Bouse, 46 Ill.App.3d 465, 471 (1977). However, in the case at bar, Officer Askew did not arrest Mr. Brown. He entered the currency exchange, pushed Mr. Brown, scolded him for his presence, and threw his newspapers on the floor. The Hearing Board determined that these actions were without lawful justification, and this court will not disturb that finding.

This court must also affirm the finding of a violation of Conduct Rule 2. Rule 2 prohibits "any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department." Chi. Police R. Conduct. A comment to the Rule states, "It prohibits any and all conduct which is contrary to the letter and spirit of Departmental policy or goals or which would reflect adversely upon the Department or its members. It includes not only all unlawful acts by members but also all acts, which although not unlawful in themselves, would degrade or bring disrespect upon the member or the Department." Chi. Police R. Conduct. The Hearing Board concluded that that Officer Askew's actions of unjustifiably making physical contact with Mr. Brown while off-duty brought discredit upon the Department, and this court will not disturb that finding.

1. The court will not assess the credibility of witnesses.

Mr. Askew also asserts that the incredibility of Mr. Brown's testimony requires this court to hold that the Hearing Board's findings were against the manifest weight of the evidence. This argument is also unpersuasive. It is again asking the court to reweigh the evidence or assess the witnesses' credibility.

As the First District stated in Caliendo v. Martin, a court will not assess the credibility of a witness when reviewing the findings of an administrative body. Caliendo v. Martin, 250 Ill.App.3d 409 (1 Dist.1993). The Caliendo court specifically stated that the credibility of witnesses is only within the province of the Board. It is not the function of the court to reweigh the evidence presented to an administrative tribunal, but instead to

determine whether the findings are supported by some evidence. Caliendo, 250 Ill.App.3d at 416-17. The first district also stated in Hruby v. Board of Fire & Police Com'rs of City of Berwyn, 22 Ill.App.3d 445 (1st Dist.1974), that where there is conflicting testimony, the agency conducting the hearing determines the credibility of the various witnesses. So long as the findings of the agency are based on substantial evidence and do not go against the manifest weight of the evidence, the court will not substitute its own independent judgment. Hruby, 22 Ill.App.3d at 452.

Petitioner cites Basketfield v. Police Board of the City of Chicago, 56 Ill.2d 351 (1974), to support the proposition that an incredible testimony can lead a reviewing court to conclude that the holding of an administrative board is against the manifest weight of the evidence. Basketfield, however, is distinctive from the case at bar. In Basketfield, a police officer was discharged by the Chicago Police Board for misconduct. Basketfield, 56 Ill.2d at 360. In reviewing the Board's decision, the court found that the discharge was against the manifest weight of the evidence. The court based its reasoning on the opinion that the most serious allegations against the discharged officer were solely based on the unreliable testimony of one investigating police officer. Id. at 359.

Here, unlike Basketfield, other evidence aside from testimony was taken into consideration by the Hearing Board in determining its findings. Surveillance evidence, witness testimony, and the Officer's own statements were used in the Hearing Board's findings of guilt. Although conflicting testimony may have been given by the victim in this case, other evidence supported the finding that Officer Askew violated the City's Rules of Conduct. The findings of the Chicago Police Hearing Board are therefore supported by evidence, and the petitioner thus fails to prove that such findings are contrary to the manifest weight of the evidence.

II. THE SANCTION IMPOSED BY THE POLICE HEARING BOARD IS NOT UNREASONABLE OR ARBITRARY.

A reviewing court will not interfere with an agency's decision to impose sanctions unless the agency acted unreasonably or arbitrarily or chose a sanction which is unrelated to the purpose of the statute. Department of Mental Health & Developmental Disabilities v. Civil Service Comm'n, 85 Ill.2d 547 (1981). The determination of the appropriate sanction is one to be made by the administrative agency and not the courts. Momney v. Edgar, 207 Ill.App.3d 26, 29 (1990). The fact that an opposite conclusion might be reasonable or that this court might have reached a different conclusion is not sufficient to set aside the agency's decision. Caliendo, 250 Ill.App.3d at 416.

An administrative tribunal's finding may be considered arbitrary and unreasonable when it is compared to the discipline imposed in a completely related case. Id. at 420. A case which reaffirms this point is Launius v. Bd. Of Fire and Police Comm'rs of Des Plaines, 152 Ill.App.2d 419 (1992). In Launius, two police officers were disciplined for misconduct. The defendant, Launius, was discharged for leaving his post to check on his family during a flood. Another officer, however, received only a suspension when he refused to come to his post because of the flood. The court held that the board's decision

to discharge Launius was not arbitrary and unreasonable, reasoning that the facts of the two cases were not sufficiently related. Launius, 151 Ill.2d at 442.

The Launius case is directly applicable to the case at bar because it illustrates the necessity of complete relatedness in facts. In Launius, although the same surrounding circumstances gave rise to the officers' misconduct, the court determined that the facts were not similar enough to conclude that the imposition of different sanctions was arbitrary and unreasonable. Id. at 442.

A case which illustrates a set of facts that are completely related is Wilson v. Board of Fire and Police Com'rs of City of Markham, 205 Ill.App.3d 984 (1st Dist.1990). In Wilson, two police officers engaged in an altercation against one another. Although both officers' violations resulted from the same incident, and both officers engaged in similar conduct, the police board held separate hearings. One officer was suspended for 30 days and the other was discharged. The appellate court remanded the case for a new hearing on sanctions. The court reasoned that because the events surrounding the two cases were completely related, and there was a gross disparity between the two sanctions, a new hearing on sanctions was warranted. Wilson, 205 Ill.App.3d at 992.

Mr. Askew's brief compares his sanction to those received by police officers in unrelated incidents. As shown in Wilson, for a reviewing court to hold an administrative board's finding unreasonable or arbitrary, the finding must be compared to facts that are completely related. The cases presented by Mr. Askew are not completely related; therefore, his argument that his sanction is unreasonable is without merit.

IV. Conclusion

Mr. Askew's Complaint for Administrative Review is, hereby, denied.

ENTER,

Judge

